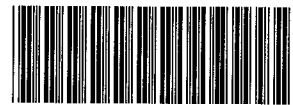


**COMMISSIONERS**  
MARC SPITZER - Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES



0000002288

**RECEIVED**  
**ARIZONA CORPORATION COMMISSION**

2004 APR -5 P 1:45

DATE: April 5, 2004  
DOCKET NO: T-04217A-03-0810

**AZ CORP COMMISSION**  
**DOCUMENT CONTROL**

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amanda Pope. The recommendation has been filed in the form of an Order on:

**DNR ENTERPRISES, L.L.C. dba DESERT WIND COMMUNICATIONS**  
**(CC&N/RESELLER)**

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

**APRIL 14, 2004**

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

**APRIL 20 AND 21, 2004**

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

Arizona Corporation Commission  
**DOCKETED**

APR - 5 2004

DOCKETED BY	
-------------	--

**BRIAN C. McNEIL**  
**EXECUTIVE SECRETARY**

1  
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 MARC SPITZER, Chairman  
5 WILLIAM A. MUNDELL  
6 JEFF HATCH-MILLER  
7 MIKE GLEASON  
8 KRISTIN K. MAYES

9 IN THE MATTER OF THE APPLICATION OF  
10 DNR ENTERPRISES, L.L.C. dba DESERT WIND  
11 COMMUNICATIONS FOR A CERTIFICATE OF  
12 CONVENIENCE AND NECESSITY TO PROVIDE  
13 COMPETITIVE RESOLD INTEREXCHANGE  
14 TELECOMMUNICATIONS SERVICES, EXCEPT  
15 LOCAL EXCHANGE SERVICES IN MARICOPA  
16 COUNTY, ARIZONA.

DOCKET NO. T-04217A-03-0810

DECISION NO. \_\_\_\_\_

**ORDER**

11 Open Meeting  
12 April 20 and 21, 2004  
13 Phoenix, Arizona

14 **BY THE COMMISSION:**

15 Having considered the entire record herein and being fully advised in the premises, the  
16 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

17 **FINDINGS OF FACT**

18 1. On November 6, 2003, DNR Enterprises, L.L.C. dba Desert Wind Communications  
19 ("Applicant" or "Desert Wind") filed with the Commission an application for a Certificate of  
20 Convenience and Necessity ("Certificate") to provide competitive resold interexchange  
21 telecommunications services, except local exchange services, within Maricopa County, Arizona.

22 2. Applicant is a switchless reseller that purchases telecommunications services from a  
23 variety of carriers for resale to its customers.

24 3. In Decision No. 58926 (December 22, 1994), the Commission found that resold  
25 telecommunications providers ("resellers") are public service corporations subject to the jurisdiction  
26 of the Commission.

27 4. Desert Wind has authority to transact business in the State of Arizona.

28 5. On December 30, 2003, Desert Wind filed an Affidavit of Publication indicating

1 compliance with the Commission's notice requirements.

2         6.       On March 1, 2004, the Commission's Utilities Division Staff ("Staff") filed a Staff  
3 Report in this matter, which includes Staff's fair value rate base determination in this matter and  
4 recommends approval of the application subject to certain conditions.

5         7.       In the Staff Report, Staff stated that Desert Wind provided unaudited financial  
6 statements for the five month period ending December 31, 2003, which list assets of \$30,529, equity  
7 of \$29,885, and a net loss of \$34,414.

8         8.       In its Staff Report, Staff stated that based on information obtained from the Applicant,  
9 it has determined that Desert Wind's fair value rate base ("FVRB") is \$4,000. Staff has determined  
10 that Applicant's FVRB is too small to be useful in a fair value analysis and is not useful in setting  
11 rates. Staff further stated that in general, rates for competitive services are not set according to rate of  
12 return regulation, but are heavily influenced by the market. While Staff considered the FVRB  
13 information, it did not believe the information deserved substantial weight in setting rates for Desert  
14 Wind.

15         9.       Staff believes that Desert Wind has no market power and that the reasonableness of its  
16 rates will be evaluated in a market with numerous competitors. In light of the competitive market in  
17 which the Applicant will be providing its services, Staff believes that the rates in Applicant's  
18 proposed tariffs for its competitive services will be just and reasonable, and recommends that the  
19 Commission approve them.

20         10.       Staff recommended approval of Desert Wind's application subject to the following:

21               (a)       The Applicant should be ordered to comply with all Commission rules, orders,  
22 and other requirements relevant to the provision of intrastate telecommunications  
23 service;

24               (b)       The Applicant should be ordered to maintain its accounts and records as  
25 required by the Commission;

26               (c)       The Applicant should be ordered to file with the Commission all financial and  
27 other reports that the Commission may require, and in a form and at such times as the  
28 Commission may designate;

              (d)       The Applicant should be ordered to maintain on file with the Commission all

current tariffs and rates, and any service standards that the Commission may require;

(e) The Applicant should be ordered to comply with the Commission's rules and modify its tariffs to conform to these rules if it is determined that there is a conflict between the Applicant's tariffs and the Commission's rules;

(f) The Applicant should be ordered to cooperate with Commission investigations, including but not limited to, customer complaints;

(g) The Applicant should be ordered to participate in and contribute to the Arizona Universal Service Fund, as required by the Commission;

(h) The Applicant should be ordered to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;

(i) Should the Applicant seek to collect from its customers an advance, deposit, and/or prepayment, it must file an application, which references this docket and explains the Applicant's plan for procuring a performance bond, with the Commission for Staff review. Upon receipt of such filing and after review, Staff will forward its recommendations to the Commission;

(j) The Applicant's intrastate interexchange service offerings should be classified as competitive pursuant to A.A.C. R14-2-1108;

(k) The Applicant's maximum rates should be the maximum rates proposed by the Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive services should be the Applicant's total service long run incremental costs of providing those services as set forth in A.A.C. R14-2-1109; and

(l) In the event that the Applicant states only one rate in its proposed tariff for a competitive service, the rate stated should be the effective (actual) price to be charged for the service as well as the service's maximum rate.

11. Staff further recommended that Desert Wind's Certificate should be conditioned upon the Applicant filing conforming tariffs in accordance with this Decision within 365 days of the effective date of this Decision, or 30 days prior to providing service, whichever comes first.

12. Staff recommended that if the Applicant fails to meet the timeframes outlined in Findings of Fact No. 11, that Desert Wind's Certificate should become null and void without further Order of the Commission and that no time extensions for compliance should be granted.

13. Staff recommended that if Desert Wind desires to discontinue service, it should be required to notify each of its local interexchange customers and the Commission 60 days prior to

1 filing an application to discontinue service pursuant to A.A.C. R14-2-1107.

2 14. The rates proposed by this filing are for competitive services.

3 15. Staff's recommendations as set forth herein are reasonable.

4 16. Desert Wind's fair value rate base is \$4,000.

5  
6 **CONCLUSIONS OF LAW**

7 1. Applicant is a public service corporation within the meaning of Article XV of the  
8 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

9 2. The Commission has jurisdiction over Applicant and the subject matter of the  
10 application.

11 3. Notice of the application was given in accordance with the law.

12 4. Applicant's provision of resold interexchange telecommunications services is in the  
13 public interest.

14 5. Applicant is a fit and proper entity to receive a Certificate as conditioned herein for  
15 providing competitive resold interexchange telecommunications services in Arizona.

16 6. Staff's recommendations in Findings of Fact Nos. 8, 9, 10, 11, 12, and 13 should be  
17 adopted.

18 7. Desert Wind's fair value rate base is not useful in determining just and reasonable  
19 rates for the competitive services it proposes to provide to Arizona customers.

20 8. Desert Wind's rates, as they appear in its proposed tariffs, are just and reasonable and  
21 should be approved.

22 **ORDER**

23 IT IS THEREFORE ORDERED that the application of DNR Enterprises, L.L.C. dba Desert  
24 Wind Communications for a Certificate of Convenience and Necessity for authority to provide  
25 competitive resold interexchange telecommunications services, except local exchange services within  
26 Maricopa County, is hereby granted, conditioned upon its compliance with the conditions  
27 recommended by Staff as set forth in Findings of Fact Nos. 10, 11, 12, and 13 above.  
28 ...

IT IS FURTHER ORDERED that Staff's recommendations set forth in Findings of Fact Nos. 8, 9, 10, 11, 12, and 13 above are hereby adopted.

IT IS FURTHER ORDERED that DNR Enterprises, L.L.C. dba Desert Wind Communications shall comply with the adopted Staff recommendations as set forth in Findings of Fact Nos. 10, 11, and 13 above.

IT IS FURTHER ORDERED that if DNR Enterprises, L.L.C. dba Desert Wind Communications fails to meet the timeframes outlined in Findings of Fact No. 12 above, that the Certificate conditionally granted herein shall become null and void without further Order of the Commission.

IT IS FURTHER ORDERED that if DNR Enterprises, L.L.C. dba Desert Wind Communications fails to notify each of its customers and the Commission at least 60 days prior to filing an application to discontinue service pursuant to A.A.C. R14-2-1107, its Certificate of Convenience and Necessity shall be deemed void.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_ day of \_\_\_\_\_, 2004.

BRIAN C. McNEIL  
EXECUTIVE SECRETARY

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

AP:mj

SERVICE LIST FOR: DNR ENTERPRISES, L.L.C. DBA DESERT WIND  
COMMUNICATIONS

DOCKET NO.: T-04217A-03-0810

Dan Holloway  
Desert Wind Communications  
3404 West Cheryl Drive  
Suite A-175  
Phoenix, Arizona 85051

Matthew Schulman  
Regnum Group, Inc.  
8181 NW 36<sup>th</sup> Street  
Suite 4  
Miami, Florida 33166

Christopher Kempley, Chief Counsel  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

Ernest G. Johnson, Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007